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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/332,420	06/14/1999	DAVID EDGAR HAUBER	AD-2	2916

7590

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EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 04/02/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/332,420

Applicant(s)

HAUBER, DAVID EDGAR

Examiner

Alicia Chevalier

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 January 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **RESPONSE TO AMENDMENT**

### ***Continued Prosecution Application***

1. The request filed on January 17, 2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/332,420 is acceptable and a CPA has been established. An action on the CPA follows.

### ***WITHDRAWN REJECTIONS***

2. The 35 U.S.C. §102 and §103 rejections of claims 1-10 as anticipated and over Keister (4,343,333) of record in paper #3, pages 5-7, paragraphs #10 and #13 have been withdrawn.

### ***NEW REJECTIONS***

3. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

### ***Claim Rejections - 35 USC § 102/103***

4. Claims 1-6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gibson et al. (H1261).

Gibson discloses filament wound parts or structures for containers such as tanks, pressure vessels, cylinders and bottles, and conduits such as piping and tubing, which may be used for pressurized or compressed gases and cryogenic gases (col. 1, lines 11-15). The filament wound composite comprising a melt-processable thermoplastic matrix with reinforcing or structural

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wound fibers (col. 2, lines 37-41). The reinforcing fibers are high strength, non-thermoplastic, reinforcing or structural fibers may be glass such as E glass and S glass, aramid, carbon, and boron (col. 3, lines 17-20).

Example 1 discloses that the thermoplastic matrix is formed around a cylindrical mandrel and then solidified. Reinforcing fibers are then wound around the cylindrical thermoplastic matrix in multiple layers at a wind angle or 65° or the hoop direction. After each layer is of reinforcing fibers is wound around the thermoplastic matrix hot air is direct onto the filament at the point of mandrel contact so that the thermoplastic material is in a thixotropic molten state, and the hand-held press roll is used to apply a pressure of about ten pounds at the impingement point.

The method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974).

Furthermore, the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 946,

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966 (Fed. Cir. 1985) and MPEP §2113. In this case, the limitation the continuous fibers having been continuously applied in an unbonded condition is a method of production and therefore does not determine the patentability of the product itself.

***Claim Rejections - 35 USC § 103***

5. Claims 7-10 rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson et al. (H1261).

Gibson discloses all the limitation of the instant claimed invention except for the a plurality of reinforced pipe lengths joined together at the ends. It would have been obvious to one of ordinary skill in the art at the time of the invention to make short pipes to be connected end to end later for easy storage and transportation of the pipe before use.

***ANSWERS TO APPLICANT'S ARGUMENTS***

6. Applicant's arguments filed in paper #10 regarding the 35 U.S.C. §102 and §103 rejections of claims 1-10 as anticipated and over Keister (4,343,333) of record have been considered but are moot since the rejections have been withdrawn.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (703) 305-1139. The Examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:00 p.m. The Examiner can also be reached on alternate Fridays

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If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Blaine Copenheaver can be reached by dialing (703) 308-1261. The fax phone number for the organization official non-final papers is (703) 872-9310. The fax number for after final papers is (703) 872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose phone number is (703) 308-0661.

ac

A handwritten signature, possibly reading 'AC', is written over the initials 'ac'.

3/28/02

A large, stylized handwritten signature, likely of Blaine Copenheaver, is written above the printed name and title.

BLAINE COPENHEAVER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700